

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**RONALD B. PALMER and  
SHERRY L. PALMER,**

**Plaintiffs,**

**v.**

**DEREK WILLIAM KIRKWOOD, *et*  
*al.*,**

**Defendants.**

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**Civil Action No. 4:20-cv-688-SDJ-KPJ**

**MEMORANDUM ADOPTING REPORTS AND  
RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the reports of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. The Magistrate Judge has entered the following proposed findings of fact and recommendations (the “Reports”), (Dkts. #64, #65):

1. Defendant Corinth Police Department’s (“Corinth Police”) Rule 12(b)(6) Motion to Dismiss, (Dkt. #28), should be granted, as Corinth Police is a non-jural entity that cannot be sued.
2. Defendant City of Corinth’s (the “City”) Motion to Dismiss Plaintiffs’ State Law Tort Claims Against Defendants Derek Kirkwood (“Officer Kirkwood”) and James Hulse (“Officer Hulse”), (Dkt. #30), should be granted, as Plaintiffs have no private right of action under the Texas Penal Code or Texas Code of Criminal Procedure, and the common law tort claims asserted against Kirkwood and Hulse must be dismissed under Section 101.106(e) of the Texas Civil Practice and Remedies Code.

Having received the Reports of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s Reports as the findings and conclusions of the Court. Accordingly, Corinth Police’s Rule 12(b)(6) Motion to Dismiss, (Dkt.


#28), and the City's Motion to Dismiss Plaintiffs' State Law Tort Claims Against Defendants Kirkwood and Hulse, (Dkt. #30), are **GRANTED**.

Plaintiffs' claims against Corinth Police are hereby **DISMISSED WITH PREJUDICE**.

Plaintiffs' state-law claims against Officer Hulse, labeled as claims F, J, K, M, and N (assault, aggravated assault, disorderly conduct, warrantless entry into a home, malicious prosecution, and abuse of process), in Plaintiffs' Original Complaint, (Dkt. #1 at 18–19), are hereby **DISMISSED WITH PREJUDICE**.

Plaintiffs' state-law claims against Officer Kirkwood, labeled as claims F, K, L, N and O (assault, aggravated assault, disorderly conduct, warrantless entry into a home, malicious prosecution, and abuse of process), in Plaintiffs' Original Complaint, (Dkt. #1 at 19–21), are hereby **DISMISSED WITH PREJUDICE**.

**So ORDERED and SIGNED this 27th day of September, 2021.**

  
SEAN D. JORDAN  
UNITED STATES DISTRICT JUDGE